

# CLEAN UP YOUR DOWNTOWN'S GAP-TOOTHED SMILE

CALED Annual Training Conference  
March 27, 2019

Lynn Hutchins  
Goldfarb & Lipman  
[lhutchins@goldfarblipman.com](mailto:lhutchins@goldfarblipman.com)

goldfarb lipman attorneys

- ❑ CALED website has some excellent tools on the new TIF tools: <https://caled.org/tif-technical-committee/>
- ❑ Key - choose the most effective tools for the best fit to achieve your community's goals
- ❑ Consider creative layering tools

# TIF TOOL ALPHABET SOUP

3

- CRAs- Community Revitalization and investment Authorities
- IFDs- Infrastructure Financing District
- EIFDs- Enhanced Infrastructure Financing District
- SIFDs- Seaport Infrastructure Financing Districts
- IRFDs- Infrastructure and Revitalization Financing Districts
- NIFTIs- Neighborhood Infill Finance and Transit Improvement Districts
- ADPs- Annexation Development Plans
- AHAs- Affordable Housing Authorities



# SB 1145

4

- Allows Maintenance of Public Facilities Financed by an EIFD (but not with Bond Proceeds)
- Expands Usefulness of EIFD Tool
- Effective 1/1/2019

5

# ABSENTEE OWNERS

# FORECLOSED PROPERTIES

6

- Civil Code Section 2929.3 – Governmental Agencies may Impose Civil Fine of up to \$1,000/Day/Violation if Legal Owner does not Maintain Residential Property Acquired through Foreclosure
- Local Jurisdictions have Enacted Similar Penalty Programs Through Code Enforcement

7

# ENVIRONMENTAL REMEDIATION

# GATTO ACT

8

- Expands Polanco Act type of powers to cities, counties and successor housing agencies to clean up contaminated properties for reuse
- Addresses the concern that no one wants to invest in these contaminated properties given the strict liability provisions of environmental laws such as CERCLA, RCRA, & California Porter Cologne Water Quality Act.



# GATTO ACT POWERS

9

- Local agency can require landowners to provide environmental assessment studies
- Limited immunity for clean-up efforts for the local agency, developer and its successors, and lenders under state environmental law
- Cost recovery provisions for staff costs and attorneys fees
- Local agency can force 3<sup>rd</sup> party clean-up

# GATTO ACT LIMITATIONS

10

- Limited immunity under state environmental law – does not shield from
  - ▣ Federal Liability
  - ▣ Third Party Liability
- Cost recovery – must use applicable procurement procedures

11

# LOCAL ECONOMIC DEVELOPMENT

# LOCAL ECONOMIC DEVELOPMENT ORDINANCE I

12

- Cities and counties can enact local economic development strategies to increase jobs, create economic opportunity, and generate tax revenue.
- SB 470: in the public interest for local communities to advance or expend public funds for specified economic development purposes and to adopt means by which economic opportunity could be created

# LOCAL ECONOMIC DEVELOPMENT ORDINANCE II

13

- Gov't Code 53083: local agency approval of any economic development subsidy of \$100,000 or more,
  - ▣ Noticed public hearing
  - ▣ Report available to public (must be on website), including a description, schedule beneficiary, public purpose, and public benefits (including job creation) of the economic development subsidy
- Gov't Code 53083: every 5-years - public meeting with same written information – accountability & transparency
- Establish clear land disposition requirements

# SB 470/AB 806:

## ECONOMIC OPPORTUNITY

14

- Statute Defines "economic opportunity":
  - Agreements that create/retains at least 1 FTE permanent job for every \$35k of investment
  - Agreements that create property tax increase of at least 15% compared to year before property acquired by the public entity
  - Creation of affordable housing
  - Project included in an adopted sustainable communities strategy or comparable plan
  - Transit priority projects

□

# AB 806: LIMITS ON EMINENT DOMAIN

15

- Existing law prohibits the use of eminent domain for economic development purposes – confirmed in AB 806
- Prohibits transfers, for economic development purposes, of real property acquired through eminent domain at a price that is less than fair market value except for:
  - ▣ Properties governed by a LRPMP (old RDA non-housing properties)
  - ▣ Redevelopment housing assets if finding of completion issued by DOF

# AB 806:

## LAND DISPOSITION PROCESSES

16

- Must be at noticed public hearing, with once a week notice for 2 weeks
- Available at time of 1<sup>st</sup> notice - proposed lease/sale agreement and report with following information:
  - Cost of the agreement to the local agency
  - Estimated FMV at highest and best use
  - Estimated value of interest transferred given conditions in agreement
- Explanation of why sales price or lease payments less than FMV, if applicable
- May use other available disposition methods – not exclusive



# AB 806 PROCESS

17

- Creation of economic development opportunities must follow process in Gov't Code 53803
- Not exclusive method to create economic development opportunities

# COMMERCIAL REHAB LOANS

18

- Commercial rehabilitation loans to owner or tenants of commercial buildings or structures.
  - Written agreement must include:
    - Payment schedule
    - Terms of interest calculation
    - Rights and remedies upon default
    - Other material terms of the loan
  - Must make a finding, after a public hearing, that the assistance is necessary for the economic feasibility of the development and that the assistance cannot be obtained on economically feasible terms in the private market

# ASSISTANCE FOR INDUSTRIAL AND MANUFACTURING USES

19

- Local agency may assist with financing of facilities or capital equipment, including pollution control devices
- Approval at public hearing with following findings:
  - ▣ Assistance is necessary for economic feasibility of development
  - ▣ Assistance cannot be obtained on economically feasible terms in the private market

20

## ADDITIONAL ECONOMIC DEVELOPMENT TOOLS TO CONSIDER WITH LAYERING

# NEW MARKETS TAX CREDITS

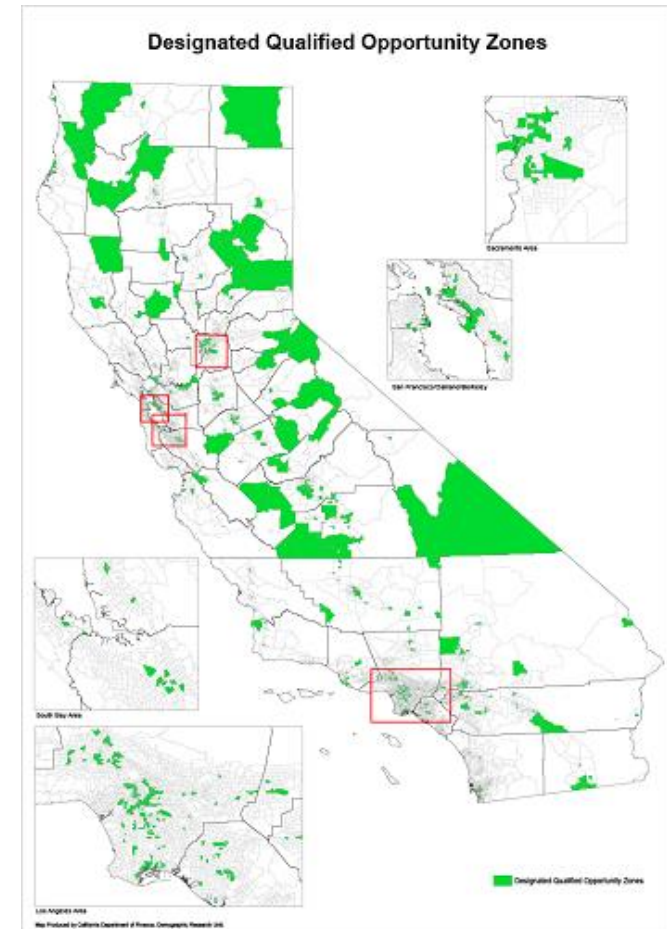
21

- A federal tax credit program designed to stimulate investment in low-income communities or to assist-low income “targeted populations”. Not affordable rental housing
- A 39% tax credit for every Qualified Equity Investment (QEI) to a Community Development Entities (CDEs).
- Part of the Community Renewal Tax Relief Act of 2000.
- Over \$54 Billion of NMTCs awarded since the program began.
- Administered by the CDFI Fund, part of the US Treasury Department.

# OPPORTUNITY ZONES

22

- **What is an Qualified Opportunity Zone?**
  - Census tracts designated by Secretary of Treasury as low-income community (LIC)
  - Limited ability to include contiguous tracts where median income  $\leq 125\%$  of the contiguous qualifying LIC
  - All QOZ will qualify for NMTC investments
  - California nominated total of 879 census tracts
  - Designation lasts for 10 years
  - Vehicle for investment and job creation in distressed communities



# ADDITIONAL CED TOOLS

23

- Assessment Tools- CFDs, Assessment Districts, BIDs
- Land Use Tools- Density Bonus, SB 35, Zoning, Development Incentives, Specific Plans, CEQA Documentation, Transfer of Development Rights
- Financing Tools- General Funds, Bonds, COPs, Infrastructure Loan Programs, Fee Producing Infrastructure, New Market Tax Credits, Opportunity Zones
- Real Estate Tools- Use of Public Land, Government Code Development Agreements, Historical Preservation
- Remediation Tools- Gatto Act, US EPA Clean Up Grants Brownfield Loan Fund